

1 Claim No. 10725-02574 filed by August J. Amaral, Inc. (the "Subject Proof of Claim")  
 2 against USA Commercial Mortgage Company ("USACM") in the amount of \$148,648.<sup>1</sup>

3 Here, the Subject Proof of Claim is based upon an investment in three different  
 4 loans: the Bay Pompano Beach, LLC Loan; the Oak Shores II Loan; and the Universal  
 5 Hawaii Loan. The USACM Trust has filed omnibus objections to the claims arising out of  
 6 investments in these loans. In association with those objections, on July 23, 2009, the  
 7 USACM Trust filed the Declaration of Edward M. Burr in Support of Omnibus Objections  
 8 to Proofs of Claim Based Upon the Investment in the Bay Pompano Beach Loan ("Burr  
 9 Decl. re Pompano Beach Loan") [DE 7444]<sup>2</sup>; on August 3, 2001, the Declaration of  
 10 Edward M. Burr in Support of Omnibus Objections to Proofs of Claim Based Upon the  
 11 Investment in the Universal Hawaii Loan ("Burr Decl. re Universal Hawaii Loan") [DE  
 12 8818]<sup>3</sup>; on April 11, 2011, the Declaration of Geoffrey L. Berman in Support of Omnibus  
 13 Objections to Proofs of Claim Based Upon the Investment in the Oak Shores II Loan  
 14 ("Berman Decl. re Oak Shores II Loan") [DE 8311].<sup>4</sup> Copies of all three declarations have  
 15 been served on the claimant with this Objection.

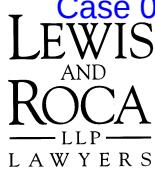
16 THIS OBJECTION DOES NOT RELATE TO AND WILL NOT IMPACT THE  
 17 DIRECT LENDER'S SCHEDULED CLAIM IN THE AMOUNT OF \$115,000 ARISING  
 18 OUT OF UNREMITTED PRINCIPLE ASSOCIATED WITH THE UNIVERSAL  
 19 HAWAII LOAN, RIGHT TO REPAYMENT FROM A BORROWER OR TO SHARE IN

21 <sup>1</sup> In compliance with Nevada LR 3007, a copy of the first page of the Subject Proof of Claim is attached as  
 22 **Exhibit A**

22 <sup>2</sup> The USACM Trust filed the Burr Decl. re Pompano Beach Loan in support of omnibus objections to  
 23 Direct Lender claims that were based upon an investment in that loan. The Court heard those omnibus  
 24 objections and sustained them at the omnibus hearing on August 21, 2009.

24 <sup>3</sup> The USACM Trust filed the Burr Decl. re Universal Hawaii Loan in support of omnibus objections to  
 25 Direct Lender claims that were based upon an investment in that loan. The Court will hear those omnibus  
 26 objections at the omnibus hearing scheduled for September 30, 2011.

26 <sup>4</sup> The USACM Trust filed the Berman Decl. re Oak Shores II Loan in support of omnibus objections to  
 27 Direct Lender claims that were based upon an investment in that loan. The Court heard those omnibus  
 28 objections and sustained them at the omnibus hearing on May 9, 2011.



1 ANY PROCEEDS GENERATED FROM THE SALE OF REAL PROPERTY  
2 SECURING THE LOANS AT ISSUE.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

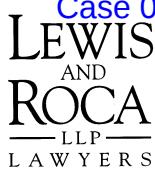
4 **I. BACKGROUND FACTS**

5 On April 13, 2006 ("Petition Date"), USACM filed a voluntary petition for relief  
6 under chapter 11 of the Bankruptcy Code. Debtor continued to operate its business as  
7 debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.  
8 Debtor's post-petition management of the Debtor was under the direction of Thomas J.  
9 Allison of Mesriow Financial Interim Management, LLC, who served as the Chief  
10 Restructuring Officer.

11 USACM was a Nevada corporation that, prior to the Petition Date, was in the  
12 business of underwriting, originating, brokering, funding and servicing commercial loans  
13 primarily secured by real estate, both on behalf of investors and for its own account. That  
14 business included the solicitation of investors to purchase fractional interest in loans that  
15 USACM originated and then serviced. These investors are referred to as "Direct Lenders"  
16 in USACM's bankruptcy case and in this Objection.

17 On January 8, 2007, this Court entered its Order Confirming the "Debtors' Third  
18 Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [Docket No.  
19 2376]. As part of the Plan, and pursuant to an Asset Purchase Agreement filed with this  
20 Court, USACM sold the servicing rights to most of the loans it serviced to Compass  
21 Partners, LLC and Compass Financial Partners, LLC ("Compass"), including The Gardens  
22 LLC Timeshare Loan. The sale to Compass closed on February 16, 2007.

23 The USACM Trust exists as of the Effective Date of the Plan, which was March 12,  
24 2007. Geoffrey L. Berman is the Trustee. Under the Plan, the USACM Trust is the  
25 successor to USACM with respect to standing to seek allowance and disallowance of  
26 Claims under 11 U.S.C. § 502(a).



1       Upon information derived from filings in the United States District Court, District  
 2 of Nevada, *3685 San Fernando Lenders Company, LLC, et al v. Compass USA SPE, LLC,*  
 3 *et al*, No. 2:07-cv-00892-RCJ-GWF action, the Trust believes that “Silar Advisors, LP  
 4 (“Silar”) financed Compass’ acquisition of the Purchased Assets, including the loan  
 5 service agreements in the USACM bankruptcy case and took a secured interest in those  
 6 Purchased Assets by executing a Master Repurchase Agreement (“Repurchase  
 7 Agreement”) with Compass, and by filing a UCC-1 financing statement with the State of  
 8 Delaware.” *Id.* Docket 1250 at 13-14 (citations to declarations omitted).

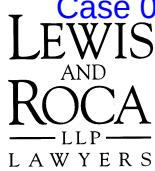
9       Further, from filings in the same action, the Trust believes that “Effective as of  
 10 September 26, 2007, Silar foreclosed on Compass through Asset Resolution LLC (“Asset  
 11 Resolution”) and took ownership of the Purchased Assets. ... Silar created Asset  
 12 Resolution as a ‘single purpose entity,’ conveyed all of its interests in the Repurchase  
 13 Agreement to Asset Resolution, and Asset Resolution properly foreclosed on the assets of  
 14 Compass, including the Purchased Assets.” (Citations omitted.) Asset Resolution LLC is  
 15 now a debtor in a chapter 7 bankruptcy case pending in Nevada, case no. BK-S-09-32824-  
 16 RCJ, along with certain affiliates.<sup>5</sup> William A. Leonard, Jr. was appointed trustee in the  
 17 Asset Resolution case.

18       The Trust has attempted to monitor loan collections through monitoring the district  
 19 court litigation and the Asset Resolution bankruptcy case, but has received limited  
 20 information concerning servicing and resolution of direct loans by Compass/Silar/Asset  
 21 Resolution or their successors, including the trustee in bankruptcy for Asset Resolution.  
 22 The following is the extent of the USACM Trust’s information on current services for Bay  
 23 Pompano Loan, Universal Hawaii Loan and Oak Shores II Loan.

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<sup>5</sup> 10 90 SPE LLC, Fiesta Stoneridge LLC, CFP Gramercy SPE LLC, Bundy 2.5 Million SPE LLC, CFP  
 26 Cornman Toltec SPE LLC, Bundy Five Million LLC, Fox Hills SPE LLC, HFAH Monaco SPE LLC,  
 Huntsville SPE LLC, Lake Helen Partners SPE LLC, Ocean Atlantic SPE LLC, CFP, Gess SPE LLC, CFP  
 Anchor B SPE LLC, and Shamrock SPE LLC.



1        The Trust notes that by Order entered on June 24, 2010 by the Hon. Robert C.  
2        Jones in United States Bankruptcy Court (Case No. BK-S-09-32824-RCJ), the servicing  
3        rights for 19 loans were transferred to Cross, FLS.

4        **II. JURISDICTION**

5        The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and  
6        157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
7        proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

8        The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and  
9        Bankruptcy Rule 3007.

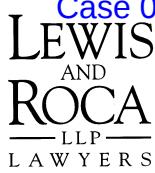
10       **III. APPLICABLE AUTHORITY**

11       Under the Bankruptcy Code, any Claim for which a proof of claim has been filed  
12       will be allowed unless a party in interest objects. If a party in interest objects to the proof  
13       of claim, the Court, after notice and hearing, shall determine the amount of the Claim and  
14       shall allow the Claim except to the extent that the Claim is “unenforceable against the  
15       debtor . . . under any . . . applicable law for a reason other than because such claim is  
16       contingent or unmatured.” 11 U.S.C. § 502(b). A properly filed proof of claim is  
17       presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof  
18       of claim controverts the presumption, the creditor ultimately bears the burden of  
19       persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated*  
20       *Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (9th Cir. B.A.P.  
21       1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

22       **IV. LOANS AND OBJECTIONS**

23       **a. The Bay Pompano Loan**

24       On June 20, 2005, Bay Pompano Beach, LLC made and delivered to various Direct  
25       Lenders a Promissory Note in an amount of \$32,000,000 (the “Note”). The Bay Pompano  
26       Loan is secured by a first position Mortgage, Security Agreement and Assignment of



1 Rents ("Mortgage") on real property and improvements thereon, as described in the  
 2 Mortgage. The Mortgage was recorded on June 30, 2005 at Instrument No. 105140658 in  
 3 the Official Records of the Broward County Commission, Florida.

4 Upon information and belief, the Bay Pompano Loan was fully secured at the time  
 5 of the loan and was fully secured at the time USACM's servicing rights were sold to  
 6 Compass Partners. Upon information and belief, the property securing the Pompano Loan  
 7 had an approximate value of \$30,100,000 as of May 25, 2006 based on an appraisal by  
 8 Hilco Real Estate Appraisal, LLC dated June 16, 2006. The Loan defaulted on June 19,  
 9 2006.

10 **b. The Bay Pompano Objection**

11 The Direct Lenders do not appear to have been harmed by USACM in this instance.  
 12 Upon information and belief, the Direct Lenders were owed the following as of July 1,  
 13 2009:

14 \$3,387,598 Principal

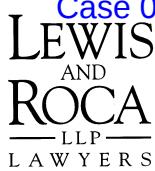
15 \$4,545,208 Accrued Interest

16 \$7,932,806 Total of above

17 Thus, even assuming the Direct Lenders were entitled to all of the above amounts, the Bay  
 18 Pompano Loan appears to have been fully secured by collateral at the time USACM  
 19 originated the Bay Pompano Loan and at the time USACM sold the servicing rights to the  
 20 loan.

21 USACM did not guarantee the Direct Lenders' investment in the Bay Pompano  
 22 Loan. The Direct Lenders, including Amaral, took an obvious risk by investing in a loan  
 23 secured by real property. USACM is not liable for the Borrower's default or any decrease  
 24 in the value of the collateral caused by the downturn in the real estate market.

25 Upon information and belief, the direct lenders in the Bay Pompano claim were  
 26 paid in full.



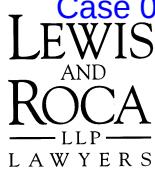
1                   **c. The Universal Hawaii Objection**

2                   There is a total of about \$5 million in scheduled unremitted principal associated  
3 with the Universal Hawaii Loan. There is a \$115,000 scheduled claim for Amaril. The  
4 USACM has already made a disbursement based upon this scheduled claim. This is the  
5 same amount asserted in the claim. Here, the USACM Trust asks the Court to disallow the  
6 Proof of Claim. The scheduled claim for \$115,000 will remain valid and eligible for  
7 future distributions.

8                   **d. The Oak Shores II Loan**

9                   By Order entered on June 24, 2010 by the Hon. Robert C. Jones in United States  
10 Bankruptcy Court (Case No. BK-S-09-32824-RCJ), the servicing rights for 19 loans were  
11 transferred to Cross, FLS. The Oak Shores II Loan servicing rights were transferred to  
12 Cross, FLS by that Order. The Trust has been in contact with Cross, FLS with regard to  
13 the status of the Oak Shores Loan.

14                   In or around November 2005, USACM circulated an Offer Sheet to prospective  
15 Direct Lenders soliciting funding for an acquisition and development loan to a borrower  
16 identified as "John and Carol King" for a project generally known as Oak Shores II, which  
17 consists of 343 lots near Paso Robles, California. A copy of the undated Offer Sheet is  
18 attached hereto as **Exhibit B** and incorporated by this reference. (Berman Decl. re Oak  
19 Shores II Loan, ¶ 4.) The total loan amount proposed was \$15,150,000. The loan  
20 proceeds were to be used by the borrower to develop the real property and construct  
21 certain infrastructure improvements required for the development of single family  
22 residences. The Offer Sheet described the investment as a "First Trust Deed Investment"  
23 and noted that the investment would be secured by a first deed of trust on approximately  
24 400 acres of land in San Luis Obispo County on Lake Nacimiento. The Offer Sheet  
25 indicated that the loan would be repaid from the sale of lots to individual buyers and from  
26 a bulk sale at final map to a third party. The Offer Sheet also stated there would be a loan



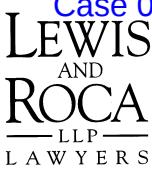
1 to value ratio of approximately 60% based on an appraisal prepared by Ryon Associates.  
2 The Ryon Associates appraisal estimates the bulk value of the property to be \$25,300,000  
3 as of March 7, 2005.

4 On June 6, 2005, Borrower made and delivered to various lenders, including  
5 Amaral, a "Promissory Note Secured by Deed of Trust" (the "Note") and a Construction  
6 Loan Agreement (Berman Decl., ¶5.) The Note and Loan Agreement provided for a loan  
7 in the initial principal amount of \$7,725,000. Pursuant to subsequent amendments to the  
8 Note and Loan Agreement, and as expressly permitted by the Loan Agreement, the  
9 amount of the loan was eventually increased to \$15,150.00. The Note was secured by a  
10 Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of  
11 Trust") that was recorded in the official records of San Luis Obispo County, California on  
12 July 1, 2005. (Berman Decl., ¶ 5.) Subsequent loan advances were secured by  
13 amendments to the Deed of Trust, and were likewise recorded in the official records of  
14 San Luis Obispo County.

15 According to information provided to the undersigned counsel, pursuant to its  
16 terms, the note was scheduled to mature twelve months after the loan documents needed to  
17 close were deposited with the title company. According to the USACM "Loan Summary"  
18 filed in this case, the loan was non-performing as of July 31, 2006. According to Cross,  
19 FLS, the loan remains non-performing, no amounts have been collected from the Borrower  
20 since Cross, FLS took over servicing of the Oak Shores II Loan, and the collateral  
21 securing the Oak Shores II Loan has not been sold.

22 According to USACM's business records, during this bankruptcy case through the  
23 transfer of servicing to Compass, USACM treated the Direct Lenders with respect to any  
24 interim payments by the borrower in accordance with this Court's orders and the  
25 confirmed Plan.

26 **e. The Oak Shores II Objection**



The Oak Shores II Loan appears to have been a legitimate, arms-length transaction, with a third party borrower. The Direct Lenders took a known risk by investing in a promissory note secured by liens on real property.

Amaral fails to state a claim based upon the Oak Shores II Loan because USACM did not guarantee the Direct Lenders' investment in the Oak Shores II Loan.

USACM is not liable for the Borrower's default or any decrease in the value of the collateral.

Amaral fails to state a claim because USACM does not appear to have breached the loan servicing agreement with respect to collection of the Oak Shores II Loan.

This objection will not affect Amaral's right to be repaid on the Oak Shores II Loan by the Borrower, or to recover from the sale of any collateral that secured the Oak Shores II Loan.

## V. CONCLUSION

Based on the foregoing, the USACM Trust respectfully requests that the Court disallow in full Proof of Claim No. 10725-02574 filed by August J. Amaral, Inc. in the amount of \$148,648.

The USACM Trust also requests such other and further relief as is just and proper.

DATED this 15th day of September, 2011.

LEWIS AND ROCA LLP

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## *Attorneys for the USACM Liquidating Trust*



1 Copy of the foregoing mailed by first class  
2 Postage prepaid U.S. mailed on  
3 September 15, 2011 to:

4 August J. Amaral, President  
5 August J. Amaral, Inc.  
6 9644 Rolling Rock Way  
7 Reno, NV 89521

8 LEWIS AND ROCA LLP

9 /s/Renee L. Creswell

10 Renee L. Creswell

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